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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of
Telecommunications Services Inside Wiring,

CS Docket No. 95-184

Customer Premises Equipment

In the Matter of

Implementation of the Cable Television
Consumer Protection and Competition Act of
1992,

MM Docket No. 92-260

Cable Home Wiring

PETITION FOR RECONSIDERATION OF DIRECTV, INC.

DIRECTV, Inc. ("DIRECTV") respectfully submits this petition for reconsideration of the Commission's *Report and Order and Second Notice of Proposed Rulemaking*, FCC 97-376 (rel. Oct. 17, 1997), in the above captioned proceeding ("*Inside Wiring Order*").

I. OVERVIEW

In proposing its inside wiring rules for multiple dwelling units ("MDUs"), the Commission sought to "more effectively promote competition and consumer choice" in the multichannel video programming distributor ("MVPD") market.¹ Unfortunately, the rules adopted in the *Inside Wiring Order* relating to the disposition of cable home run wiring fall short

¹ Telecommunications Services Inside Wiring Customer Premises Equipment, *Further Notice of Proposed Rulemaking*, CS Docket No. 95-184, FCC 97-304, at ¶ 2.

of achieving that goal. Instead of utilizing the proven framework established in the *Cable Wiring Order*,² the Commission created a new scheme for the disposition of home run wiring that will provide cable incumbents with the ability to discourage competition by alternative MVPDs. By permitting a cable incumbent to remove home run wiring without first being required to offer the MDU owner or the competitive MVPD the opportunity to purchase it, the Commission has provided the incumbent with leverage over the MDU owner's decision to obtain video service from a competitive provider. Additionally, the Commission's decision not to establish the purchase price of home run wiring -- in contrast to the framework established in the *Cable Wiring Order* -- will significantly hamper the ability of alternative MVPDs to compete. Finally, the Commission's failure to require cable operators to coordinate the removal of their wires with the installation of a competitor's wires could lead to disruption in service for consumers and could provide cable operators with an avenue by which to impede competition from alternative MVPDs. Accordingly, DIRECTV requests reconsideration of these issues.

II. THE COMMISSION SHOULD RECONSIDER ITS DECISION TO ALLOW CABLE OPERATORS TO REMOVE HOME RUN WIRING WITHOUT FIRST OFFERING MDU OWNERS THE OPPORTUNITY TO PURCHASE IT

The framework established by the *Inside Wiring Order* provides cable operators with undue leverage over the decision of an MDU owner to obtain video programming from alternative MVPDs. The *Inside Wiring Order* allows an incumbent cable operator to elect either to remove home run wiring, to abandon the wiring, or to sell the wiring to the MDU owner after it receives notice that the MDU owner seeks to obtain video programming services from an

² Implementation of the Cable Television Consumer Protection and Competition Act of 1992, *Report and Order*, MM Docket No. 92-260, 8 FCC Rcd 1435 (1993) ("*Cable Wiring Order*"), *recon. granted in part and denied in part*, 11 FCC Rcd 4561 (1996).

alternative MVPD. As adopted, nothing in the rules prevents cable incumbents from using their entrenched position to coerce an MDU owner into reversing its decision to obtain non-cable-delivered video programming. Because home run wiring is often embedded within the MDU structure, removal of the wiring would entail substantial demolition and reconstruction of the interior spaces of an MDU, creating significant disruption to the homes and lives of MDU residents. The mere risk that a cable incumbent might elect the removal option alone would make many MDU owners reluctant to consider an alternative MVPD. An express threat of removal -- or actual removal -- of home run wiring by cable incumbents would amplify that reluctance.

Moreover, this potential for disruption and coercion is wholly unnecessary. In the *Cable Wiring Order*, the Commission established a workable and effective method of disposing of home wiring that has promoted MVPD competition for over four years without spawning a single legal challenge to its validity. There, the Commission stated simply that “before removing the cable home wiring upon voluntary termination of service, the cable operator must first give the subscriber the opportunity to acquire it.”³ Only *after* the terminating subscriber declines to purchase the wiring does the cable incumbent have the option either to remove or abandon it. This framework, which has adequately protected the rights of cable operators for over four years, encourages competition because it affords consumers the ability to choose their preferred video service provider without having to face the prospect that the cable incumbent may disrupt their lives by removing wiring.

The *Inside Wiring Order* does not adequately explain why the Commission chose not to adopt the cable home wiring framework for MDU home run wiring. Nor has the

³ *Id.* at 1437, ¶ 16.

Commission provided reasons for concluding that the framework established in the *Inside Wiring Order* would be more likely to further competition and consumer choice than its cable home wiring rules. Accordingly, DIRECTV respectfully requests that the Commission reconsider its position on this issue.

III. THE COMMISSION SHOULD RECONSIDER ITS DECISION TO DENY MDU OWNERS THE RIGHT TO PURCHASE HOME RUN WIRING FOR SALVAGE OR REPLACEMENT VALUE

In the *Cable Wiring Order*, the Commission required cable operators to offer subscribers the right to purchase cable home wiring at wholesale replacement value, affording subscribers the opportunity “to make alternative uses of inside wiring at a modest price.”⁴ In the *Inside Wiring Order*, the Commission chose not to adopt this established rule and required instead that the purchase price of home run wiring to be set through negotiation or arbitration. DIRECTV urges reconsideration of this decision.

The *Inside Wiring Order* leaves the MDU owner with considerable uncertainty and unduly exposes the MDU owner or the competitive MVPD to the risk of an exorbitant price for home run wiring. Under the Commission’s rules, the MDU owner will not know for up to 30 days whether the cable operator will remove, abandon, or sell its home run wiring. If the cable operator decides to sell the home run wiring to the MDU owner or an alternative MVPD, the process could be further delayed while the parties attempt to negotiate a price.⁵ Consequently, until a price is negotiated or an arbitration decision is reached, the MDU owner will have no definite determination regarding the cost of purchasing the home run wiring. Moreover, the

⁴ *Id.* at 1438, ¶¶ 18, 19.

⁵ Although the cable incumbent may elect arbitration if the parties do not agree on a price, the arbitration process provides no guaranty that the MDU owner or competitive MVPD will be able to purchase home run wiring at a salvage or wholesale replacement price.

Commission's rules fail to provide any protection against cable incumbents demanding inflated prices for the home run wiring or abusing the arbitration process in an effort to delay competition and discourage new entrants. The cable industry need remove home run wiring only once or twice in order for the threat of removal to have coercive power over MDU owners and competitive MVPDs. Given the success with which the Commission has implemented its cable home wiring rules, the decision not to extend those rules to MDU home wiring is simply inexplicable. Consequently, DIRECTV urges the Commission to reconsider its decision on this issue.

IV. THE COMMISSION SHOULD REQUIRE THAT REMOVAL OF CABLE HOME RUN WIRING BE COORDINATED WITH THE INSTALLATION OF REPLACEMENT HOME RUN WIRING

In its initial comments, DIRECTV urged the Commission to adopt rules to require the cable incumbent to coordinate removal of its home run wires with the installation of the wires of an alternative MVPD. Absent rules that allow alternative MVPDs to install their wires before cable operators are permitted to remove theirs, the ability of an MDU resident to receive uninterrupted video service could be seriously compromised. Lack of coordination would also double the inconvenience to MDU residents, who would have to endure both the incumbent's removal and the alternative MVPD's installation of wiring. It is these sorts of inconveniences that dissuade MDU owners from considering alternative providers and that impede the development of competition in the MVPD market.

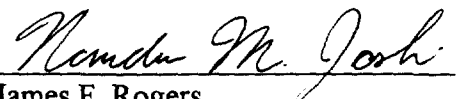
The *Inside Wiring Order* fails to address this important issue. Even in those cases where the cable incumbent does not intentionally seek to disrupt the alternative MVPD's provision of video services, the failure to coordinate could result in significant disruption to MDU owners and residents. DIRECTV urges the Commission to reconsider this issue.

V. CONCLUSION

While the Inside Wiring proceeding is an important first step in ensuring that MDU residents enjoy the full benefits of competition, as currently adopted, the rules fall short of what is needed to ensure full-fledged competition among video service providers. The Commission should reconsider its inside wiring rules and replace them with the procompetitive framework outlined in the *Cable Wiring Order*.

Respectfully submitted,

DIRECTV, Inc.

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December 15, 1997

CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of December, 1997, caused copies of the foregoing "Petition for Reconsideration of DIRECTV, Inc." to be served by hand delivery on the following:

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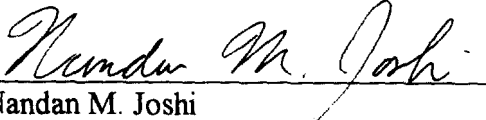
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